

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(Appellate Side)

RVW 93 of 2015
In
FMA 283 of 2014

Sipra Kanji
-Vs.-
The Kolkata Municipal Corporation & Ors.

Before: The Hon'ble Justice Arijit Banerjee
&
The Hon'ble Justice Apurba Sinha Ray

For the Appellant : Mr. Achintya Kr. Banerjee, Adv.
 Mr. R. Chakraborty, Adv.
 Mr. M. Ahmed, Adv.

For the KMC : Mr. Alok Kr. Ghosh, Adv.
 Mr. B. Mukherjee, Adv.
 Mr. Arijit Dey, Adv.

CAV On : 02.03.2023

Judgment On : 14.03.2023

Apurba Sinha Ray, J. :-

1. An application for review of the judgement and order dated 12.01.2010 delivered in MAT No. 1118 of 2009 has been filed on the grounds, interalia:-

- a) *that the application has been necessitated in view of the discovery of new and important matter or evidence which, even after the exercise of due diligence was not within the knowledge of the applicant for which the same could not be produced at the time when the impugned order dated 12.01.2010 was passed by the Hon'ble Division Bench in MAT No. 1118 of 2009,*
- b) *that there is an error apparent on the face of the order dated 12.01.2010 passed in MAT No. 1118 of 2009. While recording that there were four other OBC candidates at serial No. 55, 57, 61 and 66 of the General List who are above the applicant as OBC candidates, the Hon'ble Division Bench did not consider that in fact no documents are available with the respondent No. 1 to classify those candidates as employment exchange sponsored OBC candidates and thus mere version of the respondent No. 1 ought not to be accepted,*
- c) *that in view of the contents of the letter dated 23.04.2013 issued by the respondent No. 1 which confirms that all the alleged OBC candidates to whom appointments were given by the respondents are treated as general category appointments and it is settled law that such appointments cannot be treated as appointment in OBC reserved quota and thus in fact no appointments were made by the respondent No. 1 on OBC reserved quota in terms of order no. 261-TW/EC dated 06.04.1995 issued by the Government of West Bengal, Scheduled Castes and Scheduled Tribes Welfare Department, Writers' Building, Calcutta,*

d) *that this review application has been necessitated in view of the fact, which subsequently came to the notice of the applicant, that candidate nos. 27 and 28 from the list of general candidate, candidate nos. 3 and 7 from the list of departmental scheduled tribe candidates and candidate no. 3 from list of scheduled tribe candidate had not joined the post and in view of such non-joining by said candidates the respondent authority ought to have granted employment to the applicant along with other eligible OBC candidates,*

e) *that there was serious discrimination as no separate panel for OBC candidates was formed although separate panels for scheduled caste and scheduled tribe candidates were formed by the respondent no. 1,*

f) *that before publication of merit list or panel for general candidates, appointments were given to candidate nos. 2, 32, 37, 44 and 48 and as such the action of the respondent no. 1 suffers from material irregularity and illegality,*

g) *that, therefore, there are sufficient grounds to review the solemn judgement and order dated 12.01.2010 delivered by the Division Bench in MAT No. 1118 of 2009. Accordingly, for the interest of justice and equity, the applicant prays for review of the judgment and order dated 12.01.2010 as aforesaid.*

2. Learned Counsel, Mr. Achintya Kumar Banerjee, appearing on behalf of the applicant has time and again submitted that the petitioner has been

fighting for cause of justice since 1997 and in spite of presence of glaring illegalities and irregularities at the instance of the respondent no. 1 and its officers, the applicant was unable to get justice from the court of law as the concerned authorities suppressed material facts, documents and other papers with the sole motive to deprive the applicant from being appointed in the post of Junior Assistant in the Kolkata Municipal Corporation. Learned counsel has also drawn the attention of this court to several documents, which according to him, were obtained by the applicant after delivery of the judgment and order dated 12.01.2010. From a cursory glance over the said documents, it will be found that relevant norms for recruiting staff in the OBC category or reserved category were not followed by the concerned officers of the respondent no. 1 at the relevant time and as a result of which the petitioner was deprived from getting the relevant job in the Kolkata Municipal Corporation.

3. Learned counsel of the appellant has argued that if serious injustice is caused due to the relevant judgment and order for non-availability of material documents, the court in a review application can remove such injustice caused by its earlier order. In support of his contention, learned counsel has submitted case laws reported in (2008) 8 SCC 612 SCC OnLine Web Edition, RLW 1950 Federal Court page no. 158 and also one reportable judgment of Hon'ble Supreme Court in Civil Appeal No. 593 and 594 of 2022, M/s. Granuels Limited Vs. Union of India, delivered on January 23, 2022. Learned counsel has further submitted that in view of the fact that

serious injustice has been caused to the applicant due to the fault of the concerned officers of the respondent no. 1, some notional appointment may be given to the unfortunate applicant and necessary monetary benefits may be extended to her.

4. Learned Counsel appearing for Kolkata Municipal Corporation, Sri Biswajit Mukherjee, has argued that the review application filed by the applicant is a misconceived one since the Division Bench has clearly stated about the futility of the writ petition of the present applicant and as the panel has expired long ago, that is, more than 22 to 23 years ago, there is hardly any scope for revival of the said panel. Therefore the review application should be rejected with costs.

Decision with reasons

5. Learned Counsel for the applicant has referred to several case laws. In a reportable case, that is, M/s Granules India Ltd versus Union of India and others, (civil appeal No. 593-594 of 2020) the Hon'ble Supreme Court held that;

“The State cannot behave like a private litigant and rely on abstract theories of the burden of proof. The State acts through its officers who are given powers in trust. If the trust so reposed is betrayed, whether by casualness or negligence, will the State still be liable for such misdemeanor by its officers betraying the trust so reposed in them or will be the officers individually answerable. In our considered opinion it is absolutely no defence of the State authorities to contend that they were not aware of their own

notification 18.09.1994. The onus heavily rests on them and a casual statement generating litigation by State apathy cannot be approved.”

6. Learned Counsel has also referred to (2008) 8 Supreme Court cases 612, State of West Bengal and others versus Kamal Sengupta and another wherein the Hon’ble Supreme Court has been pleased to lay down as hereunder:

“The term ‘mistake or error apparent’ by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of order 47 Rule 1 CPC or section 22(3)(6) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal judgment/decision.”

7. In Musammat Jamna Kuer and Lal Bahadur Prasad and others (RLW 1950 FC 158), the Hon’ble Federal Court has been pleased to lay down that :

“Whether the error occurred by reason of the counsel’s mistake or it crept in by reason of an oversight on the part of the court was not a circumstance which could affect the exercise of jurisdiction of the court to review its decision. We have no doubt that the error was apparent on the face of the record and in our opinion, the question as to how the error occurred is not relevant to this enquiry. A mere look at the trial court’s decision indicates the error apart from anything else.”

8. Undoubtedly the Court has enormous powers to rectify its own mistake or the mistake committed due to misrepresentation etc. But in this case, it is pertinent to ascertain at first whether or not there was any inadvertent mistake committed by the Hon'ble Division Bench in passing the judgment dated 12.01.2010.

9. The factual matrix need not be repeated once again. It is better to start with the document, which has been enclosed by the Appellant at page no. 182, i.e., a letter dated 01/07/2013--02/07/2013. From the said letter it transpires that the Joint Director of Employment, Labour Department, Directorate of Employment, Government Of West Bengal had confirmed that the number of notified relevant vacancies in KMC was 100 in total (unreserved-45, Scheduled Caste -40, Scheduled Tribe -08, OBC-5, and PH-02).

10. It appears that three panels were published by the KMC in order of merit and they were for general candidates (78), Scheduled Caste (24), Scheduled Tribes (06) on 28.05.1997. No separate panel was published either for OBC candidates or for PH Candidates. The Record further shows that the names of OBC candidates and PH candidates were found in the panel of 78 general candidates in order of merit. Out of such 78 candidates, 50 candidates, amongst whom some belonged to OBC, were selected for appointment.

11. Needless to mention in the process of recruitment, all candidates including general, Scheduled Caste, Scheduled Tribe, OBC candidates etc are considered as unreserved candidates. As a result, a candidate belonging to any caste other than general caste –candidate may secure a berth in Unreserved Category on the basis of marks obtained. If he/she secures a berth in Unreserved Category, then his/her left out position in the quota list will be filled up by the next candidate belonging to the same caste on the basis of marks obtained by the candidates amongst the same caste.

12. In the present case, out of 45 unreserved posts, Sl no. 2. Asish Kumar Sau, Sl no. 6. Jayanta Kumar Pal, Sl no. 32. Krishnendu Basak, Sl no. 37. Devdas Pramanick, Sl no 38. Ratan Kumar Garai, Sl no. 44. Anjan Kumar Mallick, who belonged to OBC candidates got berths in the Unreserved category on the basis of marks obtained and were selected for appointment. However, there was certainly a serious mistake on the part of the KMC for not making a separate panel for 5 Successful OBC candidates, but even for such mistake, the right of the applicant was not ultimately denied.

13. To understand it properly, we have to make a detailed scrutiny. Say for example, in our case if a separate panel for Successful OBC candidates (5 posts) had been prepared, it would have been seen that that the above six candidates (Sl nos. 2, 6, 32, 37, 38, and 44) would have topped the list of OBC Candidates and they will be followed by the names of candidates in Sl no. 48. Debaprasad Nandy, Sl no. 55. Rinku Bhatta, Sl no. 57. Sribas

Baidya, Sl no. 61. Mrityunjoy Paul, Sl no. 66. Sanjit Dey, Sl no.69. Sipra Kanji, Now as the six candidates (Sl nos 2, 6, 32, 37, 38, and 44) got berths in unreserved category (45 posts), their left out positions in OBC list will be filled by next five successful candidates (as the nos. of post for OBC were 5) , i.e., Sl nos. 48, 55, 57, 61 and 66 and not by Sl no. 69... It is true that in a sound recruitment process, the employer usually prepares a list of selected candidates along with a list for wait listed candidates category wise, but in this case the same was not prepared. Had it been prepared, the name of the applicant would have appeared as the first waiting list candidate for OBC List, and the applicant would have secured the appointment, in case any successful candidate from OBC list failed to join the post within the stipulated time.

14. However, the appellant did not take this point as well as many other points, such as , appointment of some candidates prior to publication of merit list, issuance of appointment letter to candidates who changed their surnames mysteriously just prior to appointment etc., in her main Writ Application as well as in the relevant Appeal before the Division Bench of this Court , and this court dealing in a Review Application cannot go beyond the pleadings of the Writ Petitioner/ Appellant at this stage. It is incorrect to assume that sponsored OBC candidates enjoy priority or privilege over non-sponsored OBC candidates.

15. As, in our considered view, the Hon'ble Division Bench has rightly come to the conclusion that there was no infringement of the appellant's fundamental right, the case laws cited by the learned Counsel of the Appellant/ Applicant do not apply in the factual scenario of the present case.

16. Accordingly, we are constrained to dismiss the instant Review Application but without any order as to costs.

17. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.

(APURBA SINHA RAY, J.)

(ARIJIT BANERJEE, J.)